

Statement of

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**Wednesday, May 26, 1999
at a Hearing before the Senate Committee on Commerce, Science, and
Transportation**

Introduction

Mr. Chairman, Senators, I am honored today to appear before this Committee.

The Commission has enormous responsibilities under the Communications Act. You see before you five Commissioners who have worked hard and always with the best of intentions of implementing the Act. We have, from time to time, disagreed on specific Commission decisions, but we have also made great progress in many areas including, to name just a few: implementation of Section 255 for access to telecommunications service for persons with disabilities, E911 services, enforcement of anti-piracy regulations, and the initial implementation of Section 11 on regulatory reform.

Perhaps no single issue has received more attention than universal service, one of the cornerstones of the Telecommunications Act of 1996, embodied in Section 254 of the Act. To date, the Commission has not fully implemented all parts of this section. On previous occasions, I have raised several concerns about this fractured implementation and about the Commission's promulgation of rules that appear to be inconsistent with the statute. As for the Commission's implementation of universal service, however, I must regretfully inform the Committee that the Commission has made little progress in the last year. Another year goes by, and the result is another billion dollars for the e-rate program and another deferral for the high-cost program. Next year at this time, the Commission may well be here explaining why it must raise the e-rate tax again and why the cost models are almost ready and can be implemented if we can just extend the high-cost deadline by another six months.

As I stated on several occasions last year: priorities matter.¹ I remain convinced that rural, high-cost universal service is not just one of many objectives of Section 254; it should be the *highest* priority. The federal government has had universal service programs for rural, high-cost areas and for low-income Americans for many years. Section 254 embodied these ideals and set forth goals that emphasize

¹ See, e.g., Dissenting Statement of Commissioner Harold Furchtgott-Roth Regarding the Report to Congress in Response to Senate Bill 1768 and Conference Report on H.R. 3579, rel. May 8, 1998.

rural, high-cost support as well as low-income support and other objectives.

Universal Service

Almost one year ago, June 10, 1998, the Commission appeared before the Subcommittee on Communications of this Committee. At that time, the Commission's implementation of Section 254 and universal service was a prominent issue. And at that time I expressed my view that, in addition to numerous legal errors, the Commission had failed to implement Section 254 of the Telecommunications Act in a manner that reflected the priorities of Congress in general or of this Committee in particular.

It is with great disappointment that I must inform you that, in my opinion, the Commission has made very little progress on these universal service issues in the last year. Indeed, almost all of the issues that I raised in my testimony of one year ago are still relevant today. While I have attached last year's testimony for your convenience, I would like to take a moment and review some of the issues I raised at that time and their current relevance.²

Commerce Committee Priorities Left Unattended

Last year, I voiced my concern with this agency's responsiveness to Congressional intent in its implementation of Section 254. I noted that the Senate Commerce Committee had particular concerns that rural America not be left behind.

The views of what was affectionately known as the Senate Commerce Committee Farm Team were unmistakable: Section 254 on universal service was of the People, by the People, and for the People of high-cost, rural America. There were, to be sure, other important components of universal service: low-income, telemedicine, and schools and libraries. But these other elements were dwarfed in both the language and the intent of Section 254.

Indeed, at this time last year, Congressional leaders sent the Commission a letter reiterating that "our nation's core universal service program -- i.e. support for high-cost and rural America -- goes unattended by the Commission." At the time of the hearing, however, the Commission was already intending to delay the January 1, 1999 implantation of high-cost issues.

In contrast, I also noted that, while perhaps not fully vetted, quick answers had

² Testimony of Harold W. Furchtgott-Roth, before the Subcommittee on Communications of the Senate Committee on Commerce, Science, and Transportation, June 10, 1998 (Attachment I).

been found for other components of universal service -- namely the schools and libraries program. The Commission has repeatedly proceeded with some universal service programs while at the same time delaying higher priority issues.

Once again, it now appears that the Commission is poised to proceed with only one aspect of universal service and at the same time delay higher priorities.

Last year, I concluded that rural, high-cost issues should not be deferred while other aspects of universal service move forward.

Rural, high-cost universal service issues should not be resolved and implemented in some dim and distant future after all other universal service issues have been resolved; rural, high-cost universal service issues should be resolved and implemented *first*. Rural, high-cost universal service should not be viewed as the residual after enormous amounts for other federal universal service obligations have been promised; rural, high-cost universal service should receive the *lion's share* of any increase in the federal universal service fund.

While I recall the Commission providing numerous assurances that high-cost would not get left behind, here we are one year later and where is the Commission? Again seeking to raise the schools and libraries program by another billion dollars. And what about high-cost? The Commission is about to announce the second extension of time in the last year until at least January 1, 2000 for large-carrier high-cost implementation.

And what about small company high-cost support? It will be addressed in some dim and distant future. It would appear to be the Commission's lowest priority.

High-cost Universal Service and Complicated Cost Models

Nor do I believe that the Commission is converging on a solution to the high-cost universal service issues. While the Commission has continued to move forward with some of its universal service projects, it has ignored other statutory mandates.

Almost one year ago, the Chairman and ranking members of the Senate and House Commerce Committees demanded that the FCC "suspend further collection of funding for its schools and libraries program, and proceed with a rulemaking that implements all universal service programs in a manner that reflects the priorities

³ See, e.g., Letter from The Honorable John McCain, Chairman, Senate Committee on Commerce; The Honorable Ernest F. Hollings, Ranking Minority Member, Senate Committee on Commerce; The Honorable Tom Bliley, Chairman, House Committee on Commerce; The Honorable John D. Dingell, Ranking Minority

established by Congress in the Telecommunications Act of 1996."³ But the Commission continues to proceed with selected universal service programs, while at the same time delaying these higher priority issues.

And what could be the reason that the Commission has failed to act on high-cost universal service issues? I believe it is, at least in part, because the Commission has decided to use extremely complicated, complex, economic, computer, cost models. The statute neither mentions nor contemplates any form of cost model for universal service, but the Commission has decided that these extremely cumbersome models should be used to distribute high-cost universal service funds. How complicated are these models? It takes more than 180 computer hours to run the cost model program from start to finish. As an economist who has worked with economic models for much of my professional career, I have little confidence in the results of models that take hours to run -- much less hundreds of hours.

Moreover, I have concerns about the results that could be produced by this model. Thus, I provide some illustrative results from model runs, by both wire center and study area, as attachments.⁴

Universal Service Should Not Burden Consumers

One year ago I also voiced my concern that rates for many Americans would soon rise, ironically, all in the name of universal service. Once again, "the Commission may soon vote to increase rates to support funds for certain universal service programs."

I continue to oppose using such access charge reductions to fund the e-rate program. The American consumer, not federal bureaucrats, should choose how to spend any reductions in access charges. Moreover, even if access charges are reduced, not all of the e-rate contributors benefit from such reductions. For example, there will be no offsetting reduction in access charges whatsoever for wireless customers who will simply have to pay higher rates. Similarly, there is no assurance that the consumers who benefit from access charge reductions will be the same

Member, House Committee on Commerce; to The Honorable William Kennard, Chairman, Federal Communications Commission, June 4, 1998.

⁴ See Attachments II and III. The Joint Board recommended that the Commission use a cost-based benchmark with a range of 115% to 150% of the national weighted average. *Second Recommended Decision*, 13 FCC Rcd at 24761. The Joint Board also considered establishing a state's responsibility based on a percentage of intrastate telecommunications revenues somewhere between 3% and 6%. *Second Recommended Decision*, 13 FCC Rcd at 24762. For illustrative purposes, my attachments assume a benchmark of approximately 135% and roughly a 6% contribution.

consumers who will bear the new universal service burden. For example, business consumers could disproportionately benefit from the access charge reduction while residential consumers pay for new universal service fees.

In addition, unlike last year, there may not be any offsetting reductions in access charges for any consumers. Last Friday, the D.C. Circuit reversed and remanded the Commission's 1997 decision regarding the decrease in access charges that is scheduled to take place on July 1, 1999. Under the Court's Order, the Commission must reconsider those reductions or at least provide further explanation before the scheduled reductions can occur.

Some at the Commission had argued that this scheduled decrease in access charges would offset the increase in the schools and libraries program that the Chairman has been urging. But the Court has delayed these reductions. Even if the Commission seeks to stay the Court's opinion while it reconsiders the productivity factor, it is unlikely that the Commission will be able to guarantee what reductions will take place prior to the Commission's vote this Thursday to increase the schools and libraries contribution.

Thus, on Thursday, the net result to consumers will be an increase of \$1 billion dollars in e-rate fees without a corresponding decrease in long distance charges.

Universal Service Should Benefit Rural America

The rural, high-cost universal service program was not just one of many objectives of Section 254 of the Telecommunications Act; it was its *highest* priority. There are other goals of Section 254, but it is difficult to read Section 254 in its entirety and understand how a federal universal service fund program could have as its primary emphasis anything other than rural support. It is hard to dispute that the universal service section of the Telecommunications Act of 1996 was primarily intended to aid rural America.

With that goal in mind, let us examine what has taken place over the last year. Federal universal service support has nearly doubled in size since passage of the Act. But amazingly, most of that growth has not benefited rural states. Instead, growth of universal service has been for other programs that largely flow to other areas of the country. Indeed, the schools and libraries program estimates that rural schools have received only 22% of that programs dollars committed in the first year.⁵ For the Committee's convenience, I have attached a state-by-state breakdown of the schools and libraries program receipts.⁶

⁵ See National Rural/Urban Statistical Analysis (as of 2/27/99) found on the Schools and Libraries Division Website.

⁶ See Attachment IV.

Telecommunications Merger Review

The Commission has pending before it numerous license transfers, of which a select few have been singled out by the Commission for stricter scrutiny. I testified regarding the concerns that I have with the process the Commission has established for this purpose yesterday before the Subcommittee on Commercial and Administrative Law of the Committee on the Judiciary of the House of Representatives. I have attached a copy of that testimony for the convenience of this Committee.⁷

⁷ See Attachment V.